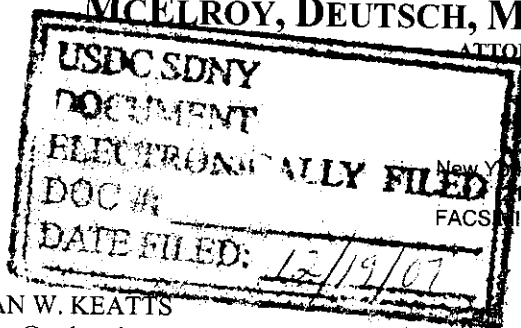


McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

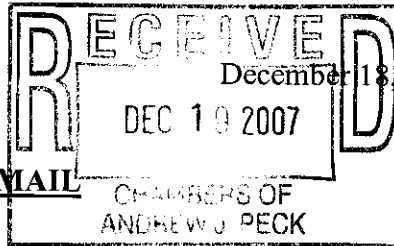
ATTORNEYS AT LAW



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BY FAX

BRIAN W. KEATTIS
bkeatts@mdmc-law.com



VIA OVERNIGHT MAIL

Magistrate Judge Andrew Peck
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 1370
New York, NY 10007

Re: National Union Fire Insurance Company v. McEwan, et al.
Index No.: 07 CIV 7515

MEMO ENDORSED

12/19/07
2007/12/19/07
corporate / Am Corp #7 - I am on
more deposits are to be made by
15th - 45th, there is NO diversity!
to the point RICO claim fails
any further on the state claim
will be supplemented pursuant to
28 USC §1367 - it will not be decided
2. Plaintiff is required to show
that the claim is...

Dear Magistrate Judge Peck:

We represent the plaintiff in the above-referenced matter. Pursuant to your directive issued during the court conference held on November 30, 2007, please allow the within to serve as the "letter brief" requested regarding diversity jurisdiction.

The plaintiff in this action is National Union Fire Insurance Company of Pittsburgh, PA ("National Union"). National Union brings this action as subrogee and assignee of The Rockefeller Foundation ("Rockefeller"). It is the citizenship of National Union, as subrogee, which is controlling when evaluating whether diversity jurisdiction exists (*Matter of the Complaint of Kreta Shipping, S.A., as Owner of M/V Amphion, for Exoneration from Limitation on Liability* (S.D.N.Y. 1997)). National Union and Rockefeller are both incorporated and maintain a primary place of business in the State of New York. However, defendant Lisa Baker is believed to be a resident of Florida. As such, it is Ms. Baker's residency that serves as the basis for the plaintiff's assertion that venue in the instant Court is proper pursuant to 28 U.S.C. § 1332.

However, diversity is not the only basis upon which this Court is afforded jurisdiction. The plaintiff has asserted a RICO cause of action pursuant to 18 U.S.C.A. § 1962 against all defendants. As such, jurisdiction in the instant court is proper pursuant to 28 U.S.C. § 1331, regardless of whether diversity jurisdiction exists or not.

MEMO ENDORSED

IT IS ORDERED that counsel to whom this Memo Endorsement is sent is responsible for faxing a copy to all counsel and retaining verification of such in counsel's case file. Do not forget to maintain such verification to Chambers.

NEWARK, NEW JERSEY RIDGEWOOD, NEW JERSEY MORRISTOWN, NEW JERSEY

DENVER, COLORADO

SO ORDERED:
Hon. Andrew Jay Peck
United States Magistrate Judge

Am for in the
12/19/07

**MC ELROY, DEUTSCH, MULVANEY &
CARPENTER LLP**

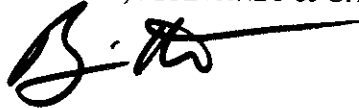
Our File No. A0014-1217
Page 2

We trust the foregoing is satisfactory to the court. We will be happy to provide any further information that the Court may deem necessary. We also take this opportunity to provide you with a courtesy copy of the Amended Complaint.

Thank you for your consideration.

Very truly yours,

MC ELROY, DEUTSCH, MULVANEY & CARPENTER, LLP



Brian W. Keatts

Encl.

cc: Anthony McEwan (via overnight mail with encl.)
Weston Community TLC
Defendant
2262 Adam Clayton Powell Jr. Blvd, Apt. 5H
New York, NY 10030

Cheryl McEwan (via overnight mail w/ encl.)
DIN #: 07G0242
Albion Correctional Facility
Defendant
3595 State School Road
Albion, NY 14411-9399

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275 Madison Avenue, 36th Floor
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Forest Hills, NY 11375

**MCELROY, DEUTSCH, MULVANEY &
CARPENTER LLP**

Our File No. A0014-1217

Page 3

Lacho Terrazas (via overnight mail w/ encl.)

Defendant

84-47 118th Street

Apt. 3B

Kew Gardens, NY 11415

Lisa Baker (via overnight mail w/ encl.)

Defendant

1334 SW 14th Street

Boca Raton, FL 33486-5305

FAX TRANSMITTAL SHEET



**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: December 19, 2007

Total Number of Pages: 3

TO	FAX NUMBER
Brian W. Keatts, Esq.	212-483-9129

TRANSCRIPTION:

MEMO ENDORSED 12/19/07

1. Because National Union is a N.Y. corporation (Am. Compl. ¶ 7) and one or more defendants are citizens of N.Y. (e.g., id. ¶ 8), there is **NO** diversity! If the federal RICO claim fails, the only jurisdiction over the state claims will be supplemental jurisdiction under 28 U.S.C. § 1367 and the Court may decline to exercise such jurisdiction.
2. Plaintiff's counsel is to serve this Order on all defendants.

Copy to: Judge Barbara S. Jones